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*Attorneys for Defendant Cognism Inc.*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

NICHOLAS KIS, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

COGNISM INC.,

Defendant.

CASE NO.: 4:22-cv-05322-JST

**DEFENDANT'S SUR-SUR-REPLY IN  
SUPPORT OF MOTION TO DISMISS  
PURSUANT TO FRCP 12**

**Date:** Thursday, April 27, 2023

**Time:** 2:00 PM Pacific Time

**Courtroom:** Oakland Courthouse,  
Courtroom 6 – 2nd Floor

Judge Jon S. Tigar

**INTRODUCTION**

Defendant Cognism, Inc. respectfully submits this sur-sur-reply in support of its Motion to Dismiss (ECF No. 24, as corrected ECF No. 45).

**ARGUMENT**

Defendant noted in its reply brief in support of its motion to dismiss that Cognism, Inc. did not own Kaspr. ECF No. 46 at 6-7 n.4. Plaintiff then requested leave to file a sur-reply, which was consented to by Defendant (ECF No. 47), which pleading then identified various sources indicating that “Cognism” had acquired Kaspr in April 2022, and argued that Mr. James Isilay, the CEO of Cognism, had therefore not been forthright in his declaration when he stated that Defendant did not own Kaspr (ECF No. 56).

Upon reading Plaintiff’s sur-reply, it became clear to Defendant’s counsel that Plaintiff was confusing Cognism Ltd, a United Kingdom company that Plaintiff had not sued and which owned Kaspr, with Cognism, Inc., the defendant in this case, that did not own Kaspr, as Mr. Isilay had correctly noted in his declaration (ECF No. 46-1 ¶ 2.)

In order to dispel this confusion, and to assure that the Court did not have to devote time and resources to this issue, Defense counsel, on March 20, 2023, called Plaintiff’s counsel and explained that the Defendant in this case did not own Kaspr. Defense counsel further requested Plaintiff’s consent to the filing of a sur-sur-reply so that the Court could be advised of the ownership of Kaspr and thereby be aware that the issue of the ownership of Kaspr was a non-issue. Plaintiff consented. Defendant filed its motion for leave to file a sur-sur-reply on March 21, 2023 (ECF No. 58), and the Court granted leave on March 28, 2023 (ECF No. 59).

Defendant Cognism, Inc. does not own Kaspr, which is owned by Cognism Ltd, not a party to this action. *See* Declaration of James Isilay, dated March 29, 2023, ¶ 2.

**CONCLUSION**

For the reasons set forth in its Motion (ECF No. 24, as corrected ECF No. 45), its reply brief (ECF No. 46) and herein, Defendant Cognism Inc. respectfully requests that the Court grant its motion to dismiss.

1 Respectfully submitted,

2 Dated: 3/29/2023

By: /s/ Michael S. Sommer

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